IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

SECOND APPEAL NO. 230 OF 2004

Shri Yashwant Tukaram Raut ... Appellant

V/s

Shri Ramchandra Devji Vartak
(since deceased, through his legal
heirs and L.Rs.)
Shri Ashok Ramchandra Vartak & ors. ... Respondents

Shri K.N. Kore for the appellant.

CORAM: P.V. KAKADE, J.

DATED: 6TH DEC., 2004.

P.C.:

1. The appellant-plaintiff has come in this appeal against the judgment and order passedby the Addl. District Judge, Palghar dated 13.12.2001 dismissing his appeal and confirming the order of Civil Judge, Jr. Divn., Vasai, dismissing the suit for specific performance.

2. I have heard the learned counsel for the appellant. Perused the record made available to me.

The appellant-plaintiff had filed the suit for specific

performance of contract claiming that the plaintiff is the owner of the land being property at Survey No.264 Hissa No.19 admeasuring 14 gunthas, whereas defendant is the owner of Survey No.264 Hissa No.12. The land of the defendants bearing 264 Hissa 12 is situated on eastern side of the plaintiff's land. Defendant Ramchandra Vartak agreed to sale and plaintiff agreed to purchase Survey No.264 Hissa 12 admeasuring 10 gunthas for consideration of Rs.15,000/- as per the agreement dated 15.3.1980. It was a oral agreement and defendant agreed to execute the said sale deed in favour of the plaintiff in terms of the agreement. Plaintiff asked the defendant to execute the sale deed but the defendant refused to do so. Hence, notice was issued and finally the suit came to be filed for specific performance of oral agreement dated 15.3.1980. The defendant challenged the suit denying all allegations made by the plaintiff. According to the defendant, no oral agreement took place between the parties and, therefore, thre is no question of passing of decree for specific performance of alleged contract.

The learned Trial Judge proceeded to adjudicate the suit on merits holding that the plaintiff failed to prove his oral agreement and, therefore, there was no question of

granting of specific performance relating to the suit property. The suit came to be dismissed.

The appeal was carried to the Court of Addl. District Judge, Palghar. The learned Appellate Court Judge endorsed the findings of the Trial Court that the transaction i.e. alleged oral agreement was not proved and hence the very foundation of the suit remained to be established and, as such, the appeal came to be dismissed. Hence the present appeal.

3. At the outset, it may be noted that both the Courts below have come to the conclusion that the plaintiff had failed to establish the alleged oral contract between the parties. Perusal of the judgment of both the Courts below leave no doubt whatsoever that there is absolutely no acceptable evidence on record in support of plaintiffs' plea of oral agreement between the parties.

There is absolutely no substantial question of law involved in this appeal. As laid down by the Supreme Court in the case of **Kondiba Dagdu Kadam v/s Savitribai, reported in A.I.R. 1999 SC 2213,** the conditions mentioned in Sec.100 of the C.P.C. must be strictly fulfilled before the second appeal can be maintained and

no Court has power to add or to enlarge those grounds. The concurrent findings of facts whatsoever erroneous cannot be disturbed by the High Court in exercise of powers under Sec.100 of the C.P.C. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at by the last Court of fact, being the first appellate Court. The mere appreciation of the facts, documentary evidence or the mentioning of entries and the contents of the documents cannot be held to be raising of substantial question of law. In the present case before us, the entire case of the appellant-plaintiff is balanced on the alleged oral agreement which was not established at all.

In view of this position, there is no substance in the appeal and, therefore, it deserves to be dismissed. Hence the appeal stands dismissed in limine with no order as to costs.

.....